IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 571 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JYOTI MOTORS

Versus

INDUSTRIAL CREDIT & DEVELOPMENT SYNDICATE LTD.

Appearance:

1. Civil Revision Application No. 571 of 2000

MR MG NAGARKAR for Petitioners No. 1-3

MR NAVIN K PAHWA for Respondent No. 1

MR DN TRIVEDI for Respondents No. 1,2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 15/01/2002

C.A.V. JUDGEMENT

1. M/s. Jyoti Tractors - petitioner has filed this revision application under Section 115 of the Code of Civil Procedure challenging the judgment and order dated

25.5.2000 passed by the learned 5th Joint Civil Judge (S.D.) Rajkot, in Civil Application No.96 of 1999 filed by the petitioner-applicant for condonation of delay in filing the main application. The learned Judge was pleased to reject the application of the petitioner being Misc.Application No.96 of 1999 for condonation of delay in filing the objection application to the award dated 15.5.98 passed by Arbitrator Shri B.I.Sharma, Advocate of Udupi in Arbitration Reference Case No.17 of 1997 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as `the Act').

2. The facts giving rise to this revision application are as under:-

2.1 The petitioner entered into a Hire Purchase Agreement with the respondent No.1 herein for purchasing Dumper Trucks of Swaraj Mazda. The instalments were paid regularly. The first petitioner stood as a guarantor.

2.2 As there was difference and dispute arose the parties approached the arbitrator and the arbitration proceedings were started. The arbitrator Shri B.I.Sharma issued notice to the applicant on 11.12.97 to appear and file its reply to the arbitration proceedings. However, petitioner preferred not to appear before the arbitrator and ultimately ex-parte award was passed by the arbitrator on 15.5.98. It appears that thereafter the award was received by the petitioner on 28.5.98.

2.3 The applicant desire to challenge the said award but beyond the control they did not file objection for the reasons stated in the application. The objections were not filed within the period of limitation. It was stated that the applicant received notice from that Court in the Special Darkhast Case No.154/1998 and immediately thereafter on 28.12.98 the objections were filed in Special Darkhast No.154/1998 challenging the award passed by the arbitrator in this behalf. In view of the same, the present application was filed on 6.2.99 for condonation of delay.

2.4 The learned 5th Joint Civil Judge (S.D.), Rajkot by his judgment and order dated 25.5.2000 has held that in this case applicant had received the award on 28.5.98 and thereafter this application filed on 6.2.99 and thereby this application has been filed late beyond the period of six months in such circumstances even if the Court may believe that sufficient cause for delay existed even after beyond this period the Court becomes powerless to entertain this application.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the learned Judge, the petitioner filed present revision application before this Court.

3. Mr. Pahwa, learned counsel for respondent No. 1 has invited my attention to Sections 34, 35 and 36 of the Arbitration Act in this behalf. Section 34 reads thus:

> "Sec. 34 Application for setting aside arbitral award - (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)
>
> (2) xxxxxxxxx
>
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, fro the date on which that request had been disposed of by the arbitral tribunal:
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> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application with a further period of thirty days, but not thereafter."

3(a) The learned counsel for the respondent has also relied on Section 35 of the Act which provides finality of arbitral awards and Section 36 of the Act provides for enforcement of awards. Under the preceding Act of 1940, an award had to be filed in the court for making it a rule of the court. Objections fro the parties were invited. Where no objection was filed or was sustainable, the court would pass a judgment in terms of the award and it was then converted into a decree for enforcement.

3(b) Under the new dispensation in the Arbitration and Conciliation Act, 1996, the above procedure has been substituted by the simple procedure of giving effect to the award as a decree. When the period for filing objection has expired or objections have been rejected, the award can be enforced under the Civil Procedure Code

in the same manner as if it were a decree passed by a court of law.

3(c) The learned counsel for the respondent therefore submitted that on a conjoined reading of Section 34(3), Section 35 and Section 36 of the Act, once the period of limitation expires, the award becomes decree and therefore the award cannot be challenged. He submitted that the Scheme of Sections 34(3), 35 and 36 of the Act supports his contention that after the period of limitation, an application for setting aside is not maintainable at law.

3(d) The learned advocate for the respondent No.1 has invited my attention to the judgment of the Hon'ble Apex Court in the case of Union of India Vs. Popular Construction Co. reported in (2001) 8 SCC 470, particularly para 12 on page 474 and para 16 on page 475 reads as under:

"Para.12 As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section(3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

"Para.16 Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with law" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

"where the time for making an application to set aside the arbitral award under Section 34 has expired .... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

4. Learned advocate for the respondent has relied upon the judgment of this Court. In this very application, in the case of M/s.Jyoti Motors Vs. Industrial Credit & Development Syndicate Ltd. and Others reported in 2001(2) GLR 1719. In view of the reasonings given by this Court in this very matter wherein this Court has considered the provisions of Sec.34(3) of the Arbitration Act, the judgment of the Hon'ble Supreme Court in the case of Mohammad Ashfaq Vs. State Transport Appellate Tribunal reported in AIR 1976 SC 2161 and also judgment of this Court in the case of Mer Ramdas Vejanandbhai Vs. Harshadbhai Malabhai reported in 1992 (1) GLH 367, after considering the same in paras 11 and 12 this Court has observed as under:

"Para 11. In my view Sec.34 of the Act itself prescribes the period of limitation for making an application for setting aside an arbitral award as also the time from which such period starts reckoning. As per Art.119(b) of the Limitation Act, 1963, an application to set aside an award under the Act of 1940 could be made within a period of 30 days from the date of the service by the Court of the notice of the filing of the award in the Court. Section 5 of the Limitation Act, 1963, applies where the limitation has been

prescribed under the Limitation Act, 1963 itself and since the limitation of three months for filing an application for setting aside an arbitral award has been prescribed under sub-sec.(3) of Sec.34 of the Act and not under the Limitation Act, 1963, Sec.5 of the Limitation Act, 1963 has no applicability and even on `sufficient cause' being shown by the applicant, the Court cannot extend the time-limit for filing such application beyond the maximum period of thirty days provided under the Act.

"Para.12 In my view the learned Judge after relying on Sec.34(3) of the Arbitration Act, has rightly rejected the application for condonation of delay. Section 34(3) of the Arbitration Act is in pari materia with the provisions of Sec.166(3) of the Motor Vehicles Act, 1988 which has been considered by the Supreme Court as well as the High Court, and therefore, the ratio laid down by the Hon'ble Supreme Court and this Court clearly applies. Therefore, I find no substance in the revision application filed by the petitioner, and therefore, the same is required to be rejected. The revision application is rejected. Interim relief stands vacated."

5. I have considered the judgment of the Hon'ble Apex Court in the case of Popular Construction Co. (supra), and also the judgment of this Court in the case of M/s.Jyoti Motors in this behalf. I have also considered the provisions of the Act particular Sec.34 & 36.

5.1 In view of the same an application for quashing and setting aside the order is filed under sub-sec.(3) of Sec.34 of the Act. Sec.34(1) says in its opening words that recourse to a court against an arbitral award may be made by an application for setting aside the award in accordance with sub-sections (2) and (3). Sub-section (2) lays down the grounds of setting aside and sub-section (3) prescribes the procedure for it.

5.2 This sub-section says that an application for setting aside may not be made after 3 months have elapsed from the date on which the party making the application had received the arbitral award. The proviso to sub-section (3) enables the court to extend the time if the court is satisfied that the applicant was prevented by sufficient cause from making the application within

the prescribed time. The Court may accept the application within a further period of 30 days but not thereafter. Thus, the power of the court is extremely limited. There should be a sufficient cause which prevented the applicant from moving the court in time and the court can grant an extension of only 30 days. In my view as pointed out by Hon'ble Supreme Court in Popular Construction (supra), Sec.36 also throw some light on the interpretation of Sec.34 and in view of the said also the interpretation put by Sec.34 is in consonance with Sec.36 of the Act.

5.3 In my view, the contention of Mr. Pahwa, learned counsel for the respondent, which I have noted earlier about provisions of Sections 34(3), 35 and 36 of the Act, requires to be accepted particularly in view of the judgement in the case of UNION OF INDIA VS. POPULAR CONSTRUCTION CO. (supra) which I have referred earlier and also the judgement of this court in M/S. JYOTI MOTORS VS. INDUSTRIAL CREDIT & DEVELOPMENT SYNDICATE LTD. (supra). In my view, therefore, the contention of the learned counsel for the respondent requires to be accepted on conjoined reading of Sections 34(3), 35 and 36 of the Act where the legislature has specially enacted such provisions in this behalf.

5.4 In the aforesaid case the award was declared on 5.5.98 which was received by the petitioner on 29.5.98, however, the petitioner did not file objection against the said award within the period of limitation prescribed under Sec.34 of the Act. He has filed objection on 28.12.98 and the present application has been filed on 6.2.99 for condonation of delay in filing objection which is clearly time barred as per Sec.34 of the Act on 6.2.99. In view of judgment of the Hon'ble Supreme Court in the case of Popular Construction (supra) and in view of the judgment of this Court in Jyoti Motors Vs. Industrial Credit & Development Syndicate Ltd., the present application filed by the applicant for setting aside the award is not maintainable at law. In view of the same, the present revision application challenging the order of the learned Judge rejecting the said application is not maintainable in this behalf.

6. In view of the same, the revision application requires to be dismissed and accordingly same is dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated.

(K.M. Mehta, J.)

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